

SENATE BILL No. 331

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Distribution system improvement charges. Provides that electric, gas, and water utilities may implement distribution system improvement charges (DSIC) as needed. (Under current law, only water utilities may implement DSICs.) Requires the utility regulatory commission (IURC) to approve a DSIC unless the DSIC would produce revenues exceeding 5% of the utility's approved base revenues. Permits the IURC to approve a DSIC that produces revenues exceeding 5% of the utility's approved base revenues if the IURC determines that the DSIC is in the best interest of the utility and the utility's ratepayers. Provides that a public utility that implements a DSIC must appear before the IURC at least once every three years for review and revision of the utility's basic rates and charges. (Under current law, a utility must appear before the IURC at least once every four years.) Requires the IURC to proportionately reduce the basic rates and charges of a utility that realizes cost savings from implementing a DSIC.

Effective: July 1, 2010.

Breaux

January 11, 2010, read first time and referred to Committee on Utilities & Technology.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 331

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1-2-42 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2010]: Sec. 42. (a) No change shall be made in
3 any schedule, including schedules of joint rates, except upon thirty (30)
4 days notice to the commission, and approval by the commission, and
5 all such changes shall be plainly indicated upon existing schedules or
6 by filing new schedules in lieu thereof thirty (30) days prior to the time
7 the same are to take effect. The commission may prescribe a shorter
8 time within which a change may be made. A public, municipally
9 owned, or cooperatively owned utility may not file a request for a
10 general increase in its basic rates and charges within fifteen (15)
11 months after the filing date of its most recent request for a general
12 increase in its basic rates and charges, except that the commission may
13 order a more timely increase if:
14 (1) the requested increase relates to a different type of utility
15 service;
16 (2) the commission finds that the utility's financial integrity or
17 service reliability is threatened; or



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(3) the increase is based on:

(A) a rate structure previously approved by the commission; or

(B) orders of federal courts or federal regulatory agencies having jurisdiction over the utility.

The phrase "general increase in basic rates and charges" does not include changes in rates related solely to the cost of fuel or to the cost of purchased gas or purchased electricity or adjustments in accordance with tracking provisions approved by the commission.

(b) **Except as provided in IC 8-1-31**, no schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned utility which includes or authorizes any changes in charges based upon costs is effective without the approval of the commission. Before the commission approves any changes in the schedule of rates, tolls, and charges of an electric utility, which generates and sells electricity, based upon the cost of fuel to generate electricity or upon the cost of fuel included in the cost of purchased electricity, the utility consumer counselor shall examine the books and records of the public, municipally owned, or cooperatively owned generating utility to determine the cost of fuel upon which the proposed charges are based. In addition, before such a fuel cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the fuel charge. The utility consumer counselor shall conduct ~~his~~ **the counselor's** review and make a report to the commission within twenty (20) days after the utility's request for the fuel cost charge is filed. The commission shall hold the summary hearing and issue its order within twenty (20) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a fuel cost charge or such a summary hearing.

(c) Regardless of the pendency of any request for a fuel cost charge by any electric utility, the books and records pertaining to the cost of fuel of all public, municipally owned, or cooperatively owned utilities that generate electricity shall be examined by the utility consumer counselor not less often than quarterly, and the books and records of all electric nongenerating public, municipally owned, or cooperatively owned utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the

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commission a reduction or elimination of the fuel cost charge. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(d) An electric generating utility may apply for a change in its fuel charge not more often than each three (3) months. When such application is filed the petitioning utility shall show to the commission its cost of fuel to generate electricity and the cost of fuel included in the cost of purchased electricity, for the period between its last order from the commission approving fuel costs in its basic rates and the latest month for which actual fuel costs are available. The petitioning utility shall also estimate its average fuel costs for the three (3) calendar months subsequent to the expiration of the twenty (20) day period allowed the commission in subsection (b). The commission shall conduct a formal hearing solely on the fuel cost charge requested in the petition subject to the notice requirements of IC 8-1-1-8 and shall grant the electric utility the requested fuel cost charge if it finds that:

(1) the electric utility has made every reasonable effort to acquire fuel and generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible;

(2) the actual increases in fuel cost through the latest month for which actual fuel costs are available since the last order of the commission approving basic rates and charges of the electric utility have not been offset by actual decreases in other operating expenses;

(3) the fuel adjustment charge applied for will not result in the electric utility earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the electric utility were approved. However, subject to section 42.3 of this chapter, if the fuel charge applied for will result in the electric utility earning a return in excess of the return authorized by the commission, in the last proceeding in which basic rates and charges of the electric utility were approved, the fuel charge applied for will be reduced to the point where no such excess of return will be earned; and

(4) the utility's estimate of its prospective average fuel costs for each such three (3) calendar months are reasonable after taking into consideration:

(A) the actual fuel costs experienced by the utility during the latest three (3) calendar months for which actual fuel costs are available; and

(B) the estimated fuel costs for the same latest three (3)

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calendar months for which actual fuel costs are available.

(e) Should the commission at any time determine that an emergency exists that could result in an abnormal change in fuel costs, it may, in order to protect the public from the adverse effects of such change suspend the provisions of subsection (d) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(f) Any change in the fuel cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

(g) **Except as provided in IC 8-1-31**, no schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned gas utility that includes or authorizes any changes in charges based upon gas costs is effective without the approval of the commission except those rates, tolls, and charges contained in schedules that contain specific provisions for changes in gas costs or the cost of gas that have previously been approved by the commission. Gas costs or cost of gas may include the gas utility's costs for gas purchased by it from pipeline suppliers, costs incurred for leased gas storage and related transportation, costs for supplemental and substitute gas supplies, costs incurred for exploration and development of its own sources of gas supplies and other expenses relating to gas costs as shall be approved by the commission. Changes in a gas utility's rates, tolls, and charges based upon changes in its gas costs shall be made in accordance with the following provisions:

(1) Before the commission approves any changes in the schedule of rates, tolls, and charges of a gas utility based upon the cost of the gas, the utility consumer counselor may examine the books and records of the public, municipally owned, or cooperatively owned gas utility to determine the cost of gas upon which the proposed changes are based. In addition, before such an adjustment to the gas cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the gas cost adjustment. The utility consumer counselor shall conduct his review and make a report to the commission within thirty (30) days after the utility's request for the gas cost adjustment is filed.

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The commission shall hold the summary hearing and issue its order within thirty (30) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a gas cost adjustment or such a summary hearing.

(2) Regardless of the pendency of any request for a gas cost adjustment by any gas utility, the books and records pertaining to cost of gas of all public, municipally owned, or cooperatively owned gas utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the gas cost adjustment. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(3) A gas utility may apply for a change in its gas cost charge not more often than each three (3) months. When such application is filed, the petitioning utility shall show to the commission its cost of gas for the period between its last order from the commission approving gas costs in its basic rates and the latest month for which actual gas costs are available. The petitioning utility shall also estimate its average gas costs for a recovery period of not less than the three (3) calendar months subsequent to the expiration of the thirty (30) day period allowed the commission in subdivision (1). The commission shall conduct a summary hearing solely on the gas cost adjustment requested in the petition subject to the notice requirements of IC 8-1-1-8 and may grant the gas utility the requested gas cost charge if it finds that:

(A) the gas utility has made every reasonable effort to acquire long term gas supplies so as to provide gas to its retail customers at the lowest gas cost reasonably possible;

(B) the pipeline supplier or suppliers of the gas utility has requested or has filed for a change in the costs of gas pursuant to the jurisdiction and procedures of a duly constituted regulatory authority;

(C) the gas cost adjustment applied for will not result, in the case of a public utility, in its earning a return in excess of the return authorized by the commission in the last proceeding in

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which the basic rates and charges of the public utility were approved; however, subject to section 42.3 of this chapter, if the gas cost adjustment applied for will result in the public utility earning a return in excess of the return authorized by the commission in the last proceeding in which basic rates and charges of the gas utility were approved, the gas cost adjustment applied for will be reduced to the point where no such excess of return will be earned; and

(D) the utility's estimate of its prospective average gas costs for each such future recovery period is reasonable and gives effect to:

(i) the actual gas costs experienced by the utility during the latest recovery period for which actual gas costs are available; and

(ii) the actual gas costs recovered by the adjustment of the same recovery period.

(4) Should the commission at any time determine that an emergency exists that could result in an abnormal change in gas costs, it may, in order to protect the public or the utility from the adverse effects of such change suspend the provisions of subdivision (3) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(5) Any change in the gas cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

SECTION 2. IC 8-1-2-42.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 42.5. **(a)** The commission shall by rule or order, consistent with the resources of the commission and the office of the utility consumer counselor, require that the basic rates and charges of all public, municipally owned, and cooperatively owned utilities (except those utilities described in IC 8-1-2-61.5) are subject to a regularly scheduled periodic review and revision by the commission ~~However, the commission shall conduct the periodic review as follows:~~

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(1) For a public utility (as defined in IC 8-1-31-7) that implements a distribution system improvement charge under IC 8-1-31, at least once every three (3) years.

(2) For a utility other than a utility described in subdivision (1), at least once every four (4) years. ~~and~~

The commission may not authorize a filing for an increase in basic rates and charges more frequently than is permitted by operation of section 42(a) of this chapter.

(b) If the commission determines in a review under subsection (a) that a public utility has realized cost savings as a result of implementing a distribution system improvement charge under IC 8-1-31, the commission shall, as part of its review and revision, downwardly adjust the basic rates and charges of the public utility in proportion to the realized cost savings.

SECTION 3. IC 8-1-31-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1.5. As used in this chapter, "distribution" means the distribution of:

- (1) electric power;
- (2) natural gas;
- (3) water; or
- (4) steam;

by a public utility to retail customers or end users.

SECTION 4. IC 8-1-31-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. As used in this chapter, "eligible distribution system improvements" means new used and useful ~~water~~ public utility plant or distribution infrastructure projects that:

- (1) do not increase revenues by connecting the distribution system to new customers;
- (2) are in service; and
- (3) were not included in the public utility's rate base in its most recent general rate case.

SECTION 5. IC 8-1-31-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. As used in this chapter, "public utility" means a:

- (1) public utility (as defined in IC 8-1-2-1(a)); or
- (2) municipally owned utility (as defined in IC 8-1-2-1(h));

that produces, transmits, delivers, or furnishes water, gas, electricity, or steam.

SECTION 6. IC 8-1-31-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) Except as provided in subsection (d) and section 10 of this chapter, a public utility

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1 ~~providing water service~~ may file with the commission rate schedules
 2 establishing a DSIC that will allow the automatic adjustment of the
 3 public utility's basic rates and charges to provide for recovery of DSIC
 4 costs.

5 (b) The public utility shall serve the office of the utility consumer
 6 counselor a copy of its filing at the time of its filing with the
 7 commission.

8 (c) Publication of notice of the filing is not required.

9 (d) A public utility may not file a petition under this section in the
 10 same calendar year in which the public utility has filed a request for a
 11 general increase in the basic rates and charges of the public utility.

12 SECTION 7. IC 8-1-31-10 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) ~~Except as~~
 14 ~~provided in Subject to~~ subsection (b) **and section 13(b) of this**
 15 **chapter**, a public utility may ~~but is not required to~~ file a petition for a
 16 change in its DSIC ~~not more often than one (1) time every twelve (12)~~
 17 ~~months~~ **as needed**.

18 (b) Except as provided in section 15 of this chapter, a public utility
 19 may not file a petition for a change in its DSIC in the same calendar
 20 year in which the public utility has filed a request for a general increase
 21 in the basic rates and charges of the public utility.

22 SECTION 8. IC 8-1-31-13 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 13. **(a)** The commission
 24 ~~may not shall~~ approve a DSIC ~~to the extent unless~~ it would produce
 25 total DSIC revenues exceeding five percent (5%) of the public utility's
 26 base revenue level approved by the commission in the public utility's
 27 most recent general rate proceeding.

28 **(b) The commission may approve a DSIC that produces total**
 29 **DSIC revenues exceeding five percent (5%) of the public utility's**
 30 **base revenue level approved by the commission in the public**
 31 **utility's most recent general rate proceeding if the commission**
 32 **determines that approving the DSIC is in the best interest of the**
 33 **public utility and the public utility's ratepayers.**

34 SECTION 9. IC 8-1-31-15 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 15. **(a)** A public utility
 36 that has implemented a DSIC under this chapter shall file revised rate
 37 schedules resetting the charge if new basic rates and charges become
 38 effective for the public utility following a commission order
 39 authorizing a general increase in rates and charges that includes in the
 40 utility's rate base eligible distribution system improvements reflected
 41 in the DSIC.

42 **(b) Notwithstanding any other law, a public utility that**

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1 implements a DSIC under this chapter shall appear before the
2 commission at least once every three (3) years for a periodic review
3 and revision of the public utility's basic rates and charges under
4 IC 8-1-2-42.5.

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